HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1234 of Year 2003 (S/S)

Smt. Sakuntala Devi

Versus.

Deputy Director & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 16.10.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT NO. 6

Writ Petition No. 1234 (S/S)/2003
Smt. Shakuntal W/o Jhushey
R/o New Quarter, Harinagar,
District Nainital. ……Petitioner

Vs.

1. Deputy Director,
   Treasury Avam Finance Services,
   Estate Internal Audit, Uttaranchal-23
   Laxmi Road, Dehradun
2. Commissioner, Kumaon Division
   Nainital.
3. Executive Officer, Nanagr Palika Parishad,
   Nainital. ……Respondents.

Counsel for petitioner **….Sri A.D. Tripathi.**
Counsel for respondents 1 & 2 **Sarva Sri N.C. Gupta and J.P. Joshi.**
Counsel for respondent No.3 **Sri Sharad Sharma.**

Hon'ble Rajesh Tandon, J.

By the present Writ Petition the petitioner has sough a writ, order or direction in the nature of mandamus commanding and directing the respondents to release the post retirement benefits and the monthly pension of the petitioner.

Heard Sri A.D.Tripathi learned counsel for the petitioner and Sri Sharad Sharma learned counsel for the respondent No.3 and Sarva Sri N.C.Gupta and J.P.Joshi on behalf of respondent Nos. 1 and 2.

Brief facts giving rise to the present writ petition are that the petitioner was initially working in Nagar Palika Parishad, Nainital on the post of Sweeper and his services were regularized and confirmed by the Nagar Swasthya Adhikari. The petitioner has retired on 30th of June 2001 on attaining the age of superannuation.

The grievance of the petitioner is that since she has retired on 30th of June, 2001 but the post retirement benefits have not been given to the petitioner

inspite of repeated request, made by the petitioner. She has been demanding from the authorities concerned pension and other benefits.

As will appear from the letter of Nagar Palika Parishad, Nainital dated 26th of December 2003 that a direction was made for the payment of post retirement benefits. Further on 16-9-2003 final orders were passed by the Nagar Palika Parishad, Nainital, fixing the pension on a sum of Rs. 1000/- per month right from 1st of July 2001.

The petitioner ha also represented to the Commissioner Kumaun Mandal Nainital but till today neither the pension nor post retirement benefits have been paid.

The counsel for the petitioner has also referred the rules regarding the pension. Rules 58 to 65 fundamental rules are relevant for the payment of the pension and other retrial benefits.

Sri Sharad Sharma learned counsel for the Nagar Palika Parishad has submitted that the matter of pension and other post retirement benefits are in process and shall be paid to her in due course.

After hearing both the parties this is a case where the petitioner has been deprived of pensionery and other post retirement benefits even after she has retired.

Article 21 of Constitution of India provides that pension and other post retirement benefits are no more bounty but are part of right to live with dignity. The employee concerned immediately after retirement is entitled to get the fruits of her continuous service. The relevant portion is quoted below.

> ***"Article 21: Protection of life and personal liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law.''***
>
> The employee who retires or superannuates from the services of an establishment cannot earn his/her livelihood without resources.

In the case of ***State of Kerala and others vs. M. Padmanabhan Nair (1985) 1 Superme Court 429*** The Apex Court has held as under:-

> ***"1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.***
>
> ***4.Unfortunately such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross-objections in the High Court it would not be proper fro us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant.***
> ***5. We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the L.P.C. but since the concerned Officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by its by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public.***

The petitioner has worked in the department for the last more than 33 years, the pensionary benefits and other retrial benefits can not be denied to her at the time when she has already retired.

Consequently a writ of mandamus or issued directing to release the pension and other post retirement benefits including gratuity available to the petitioner within a period of one month from today. The petitioner will also get an interest of 9%. In case the amount is not paid to the petitioner within that period the petition will be entitled to get the interest at the market rate.

Consequently the Writ Petition is allowed with cost.

(Rajesh Tandon J.)

Dated: 16.10.2003

ISB